DEFENCE FOR INDIGENT PERSONS IN EUROPEAN COMPARATIVE PRACTICE

Overview of international standards and comparative practices with recommendations for providing free legal aid in criminal proceedings where compulsory defence *(ex officio)* is not applicable



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Overview of international standards and comparative practices with recommendations for providing free legal aid in criminal proceedings where compulsory defence *(ex officio)* is not applicable

Elena Georgievska

Goce Kocevski

2026

Council of Europe

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E-mail: Horizontal.Facility@coe.int

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I. INTRODUCTORY REMARKS

The right to counsel is a fundamental right of an accused person in criminal proceedings and an essential element of the right to a fair trial. It is expressly guaranteed by Article 6 § 3(c) of the European Convention on Human Rights (ECHR), which grants every person charged with a criminal offence the right *"to defend themselves in person or through legal assistance of their own choosing or, if they have not sufficient means to pay for legal assistance, to be given it free when the interests of justice so require"*. An analogous guarantee is contained in Article 14 § 3(d) of the International Covenant on Civil and Political Rights (ICCPR), while at European Union level the standards are further specified by Directive (EU) 2016/1919 on legal aid for suspects and accused persons in criminal proceedings and for requested persons in European arrest warrant proceedings.

In North Macedonia, the legislature has transposed these international standards into several provisions of the Criminal Procedure Code (CPC). Article 70, which lists the basic rights of the accused, establishes among them the right of the accused *"...to defend themselves in person or with the assistance of counsel of their own choice, and if they have no means to pay for counsel, to be provided with free counsel when the interests of justice so require"*. This provision, modelled on Article 6 of the ECHR and Article 14 of the ICCPR, represents the framework guarantee from which the specific solutions follow. Article 71 establishes the general right to counsel throughout the criminal proceedings, while Articles 74 and 75 operationalise two different modalities of counsel at the expense of the State.

These two modalities must be clearly distinguished because, although both concern counsel whose costs are borne by the State budget, their legal nature and criteria for application differ fundamentally. **Compulsory defence** under Article 74 of the CPC applies *ex lege*, on the basis of objective circumstances established by law, when the accused is mute, deaf or incapable of conducting his or her own defence, when proceedings are conducted for an offence punishable by life imprisonment, when detention has been ordered, after an indictment has been filed for an offence punishable by imprisonment of ten years or more, in plea-bargaining proceedings, and in trials *in absentia*. In such cases, the accused must have counsel and, if the accused does not have one, the president of the court appoints counsel *ex officio*, irrespective of the accused's financial situation or wishes**. Defence for indigent persons** under Article 75 of the CPC, by contrast, is triggered only when the conditions for mandatory defence do not exist, upon the accused's request, and depends on the cumulative fulfilment of two subjectively assessable conditions: the accused's financial situation (the so-called means test) and the interests of justice, particularly the seriousness of the criminal offence and the complexity of the case (the so-called merits test). In other words, the compulsory defence is automatic, linked to the category of the case, and a prerequisite for taking procedural action, while the defence for indigent persons is discretionary, non-compulsory, and related to the specific circumstances of the accused and the case.

This analysis focuses precisely on the second modality, namely the right to free counsel established by Article 75 of the CPC. The 2010 CPC significantly expanded the scope of this right compared with the previous framework. The more restrictive threshold under which counsel could be appointed only for offences punishable by more than three years' imprisonment was abolished, and the possibility of requesting counsel is no longer conditional upon an indictment having been filed. This

means that the right may also be exercised during the preliminary proceedings, in accordance with the case-law of the European Court of Human Rights (ECtHR), which insists on access to counsel at all *"critical stages"* of the proceedings.

Nevertheless, despite the clear normative framework, Article 75 of the CPC is almost never applied in practice. In 2023, the total number of cases in which counsel was appointed to the accused pursuant to Article 74 of the CPC was 1,568, while the number under Article 75 was 0. In 2024, the number of cases in which the court appointed counsel to the accused pursuant to Article 74 of the CPC was 1,558, while under Article 75 there was only 1 case.[1]

This gap between the law and its implementation stems from several causes. The insufficiently precise and inconsistently interpreted criteria for the accused's "financial situation" and the "interests of justice", the unclear and non-transparent procedure for approving the request and appointing a specific lawyer, the absence of established rules for the random and objective selection of counsel from the Bar Association's list, the insufficient information provided to accused persons about the existence of this right and the lack of alignment between the CPC and the separate Law on Free Legal Aid, which does not regulate legal aid in criminal cases. As a result, many persons who objectively meet the conditions for free counsel, in terms of their financial situation and the seriousness and complexity of the case, remain without such assistance, creating a serious risk of violation of the right to a fair trial guaranteed by Article 6 of the ECHR.

In light of the above, this analysis identifies the best European standards and practices on access to free counsel in criminal proceedings and, through their comparative presentation, provides guidance for easier and more effective application of Article 75 of the CPC in national judicial practice. The analysis is structured around four key issues that appear most problematic in domestic practice:

i. the conditions for granting free legal aid - in particular the financial criterion *(means test)* and the "interests of justice" criterion *(merits test)*, including its sub-criteria concerning the seriousness of the offence and the complexity of the case;
ii. the procedure for approving the request and appointing a lawyer - with particular emphasis on transparency, objectivity and the role of the accused in selecting counsel;
iii. the scope of free legal aid - namely which actions and services of counsel are covered by the State budget, as well as the issue of any subsequent reimbursement of costs; and
iv. the stages of the proceedings for which free counsel is granted - with particular attention to the need for the right to be available in the preliminary proceedings and at all *"critical stages"* within the meaning of the ECtHR's case-law.

Through this approach, the analysis seeks not only to describe existing European standards but also to offer practical recommendations for overcoming the gaps between the norm and its

[1] The data for 2023 and 2024 were obtained through requests for free access to public information submitted to all basic courts in the country. The data were needed for the preparation of an Cost-benefit analysis for establishment of a single body for managing the integrated system for Free Legal Aid in North Macedonia, prepared within the framework of the joint Council of Europe/European Union project "Towards a Consolidated and More Efficient Free Legal Aid (FLA) System in North Macedonia", at the request of the Ministry of Justice.

implementation, so that the right guaranteed by Article 75 of the CPC would cease to be a "dead letter" and become an effective mechanism for ensuring equal access to justice.

II. DEFENCE FOR INDIGENT PERSONS UNDER THE 2010 CPC - KEY PROBLEMS AND CHALLENGES

Defence for indigent persons, regulated by Article 75 of the CPC, is one of the key mechanisms through which real, rather than merely formal, equality of the accused in criminal proceedings should be ensured. This institution serves a corrective function given the limited scope of compulsory defence under Article 74 of the CPC. While Article 74 provides for the mandatory presence of counsel only in strictly defined cases, Article 75 should make it possible to appoint counsel in other cases where the accused lacks the means to pay for defence and the interests of justice so require.

Under Article 75, when the **conditions for compulsory defence do not exist**, counsel may, **upon the accused's request**, be appointed if, **given his or her financial situation, the accused cannot bear the costs of the defence and the interests of justice so require**, **particularly in view of the seriousness of the criminal offence and the complexity of the case**. The request is decided by the judge of preliminary procedure or the president of the panel, while counsel is appointed by the president of the court. The costs of this defence are borne by the court budget.

Although this solution is conceptually sound, its practical value is limited by insufficient normative operationalisation. The first key problem is the lack of precision in the criteria. The law uses general concepts such as *"financial situation"*, *"interests of justice"*, *"seriousness of the criminal offence"* and *"complexity of the case"*, but does not elaborate them sufficiently. It is unclear which income, assets, obligations, family circumstances, debts, unemployment, social status or dependants should be taken into account when assessing whether the accused can bear the costs of defence personally. It is also insufficiently specified when the *"interests of justice"* necessarily require the appointment of counsel. This leaves broad room for divergent judicial practice and restrictive interpretation of the right. Particularly problematic is the wording that counsel "may" be appointed to the accused. This wording suggests a discretionary power of the court, although where the accused lacks means, and the case is serious or complex, appointing counsel should be the rule rather than an option. Otherwise, the right to free defence may remain dependent on the differing approaches of individual judges instead of being a predictable and equally applicable right.

The second key problem is the insufficiently clear procedure for appointing counsel. Article 75 establishes only who decides on the request and who appoints counsel, but it does not regulate important procedural issues. There is no time limit for deciding, the form and content of the request are not established, it is unclear what evidence should be submitted regarding the financial situation, there is no explicit obligation on the authorities to inform the accused of this right nor is the possibility of a legal remedy against a decision rejecting the request clearly regulated. This is a serious shortcoming because an indigent and legally uninformed accused will often not know that counsel may be requested, nor how to substantiate the request. The practical problem is even greater during the preliminary proceedings. At this stage, actions may be taken that substantially affect the outcome of the case, including questioning the suspect, gathering evidence, proposing measures, and forming the

defence's basic procedural position. If the accused is not informed that counsel may be requested under Article 75, or if the decision on the request is delayed, the right to defence may become delayed and ineffective.

The third challenge arises from the narrow scope of compulsory defence under Article 74. **Many criminal offences do not reach the threshold for mandatory defence, yet a prison sentence may still be imposed.** For example, for offences punishable by up to three or five years' imprisonment, mandatory defence does not arise solely because of the threatened sentence, but the risk to the accused may nevertheless be serious. This means that an accused person facing an offence for which deprivation of liberty is realistically possible may remain without counsel if Article 75 is not applied. In offences such as bodily injury, theft, endangerment of safety, reckless driving of a motor vehicle or other offences with lower sentencing ranges, imprisonment may be imposed, but mandatory defence does not apply unless one of the specific grounds under Article 74 exists. Such cases may be factually and legally complex, involve expert examinations, multiple witnesses, questions of intent or negligence, assessment of the lawfulness of evidence or other procedural issues that the accused may find difficult to handle alone. An additional problem is that the complexity of a case should not be understood solely through the seriousness of the criminal offence. A case involving an offence carrying a lower sentence may also be complex if it involves medical, traffic, financial, digital or other expert evidence, multiple accused persons, contradictory statements, disputed material evidence or complex legal questions. Therefore, the criterion of *"complexity of the case"* should be interpreted broadly and functionally, from the perspective of the accused's actual ability to organise and conduct the defence independently.

The consequences of the current framework are not merely a matter of internal legal technique. An insufficiently precise Article 75, if applied restrictively or inconsistently, may lead to a violation of the right to a fair trial. In cases where the accused lacked the means to pay a lawyer, faced a real risk of imprisonment or confronted a complex case, and the State failed to provide effective legal assistance, there is a risk of adverse findings before the European Court of Human Rights. Such cases could result in a finding of a violation of Article 6 of the ECHR, particularly if it is shown that the absence of counsel affected the fairness of the proceedings as a whole.

III. DEFENCE FOR INDIGENT PERSONS IN THE CASE-LAW OF THE EUROPEAN COURT OF HUMAN RIGHTS

Article 6 (Right to a fair trial)

3. Everyone charged with a criminal offence has the following minimum rights:

(c) to defend himself in person or through legal assistance of his own choosing or, if he has not sufficient means to pay for legal assistance, to be given it free when the interests of justice so require;

The right of every person charged with a criminal offence to be effectively defended by a lawyer appointed by a court or other body where necessary is one of the fundamental elements of the right to a fair trial (***Salduz v. Turkey*** [GC], 2008, § 51; ***Ibrahim and Others v. the United Kingdom*** [GC], 2016, § 255). As a rule, a suspect should have access to legal assistance from the moment when a *"criminal*

charge" exists against him or her, within the autonomous meaning of that concept under the Convention (***Simeonovi v. Bulgaria*** [GC], 2017, § 110; ***Beuze v. Belgium*** [GC], 2018, § 119; ***Dubois v. France***, 2022, §§ 45–46 and 69–75).

a. As regards the conditions for granting free legal aid

The right to free legal aid in criminal proceedings arises where two conditions are cumulatively met (***Quaranta v. Switzerland***, 1991, § 27), lack of means to pay for counsel and the requirement, in the interests of justice, for counsel to participate.

1. Lack of means to pay for counsel (Means test)

The accused must show that he or she does not have sufficient means to engage counsel (***Caresana v. United Kingdom***, 2000). The standard of proof is, however, less demanding. The person is not required to prove this fact *"beyond reasonable doubt"*. It is sufficient that there are *"some indications"* that the person lacks means, or, *argumentum a contrario*, that there is no *"clear indication to the contrary"*(***Pakelli v. Germany***, 1981, § 34; ***Tsonyo Tsonev v. Bulgaria*** (no. 2), 2010, § 39). In ***Pakelli v. Germany***, the Court formulated the standard for proving inability to pay, which remains relevant. The applicant, a Turkish national whose complaint concerned a violation of substantive rights in proceedings before the German Federal Court (*Bundesgerichtshof*), offered to substantiate (*glaubhaft machen*) his inability to secure the necessary means. The German authorities rejected the request without giving him an opportunity to do so. The ECtHR held:

> *"[T]hese particulars are not sufficient to prove* ***beyond all doubt*** *that the applicant was without sufficient means during the relevant period; however, having regard to his request to the Federal Court to establish his inability to provide the necessary means and* ***in the absence of clear indications*** *to the contrary, they lead the Court to consider that the first of the two conditions contained in Article 6 § 3(c) has been satisfied."*

The ***Pakelli*** formula has been consolidated into a doctrinal standard:

- The accused need only provide *"some indications"* of lack of means;
- Proof *"beyond all doubt"* is not required; and
- The applicant satisfies the test where there is no *"clear indication to the contrary"*, as confirmed in ***Tsonyo Tsonev v. Bulgaria*** (No. 2), 2010, § 39; ***Twalib v. Greece***, 1998, § 51.

The ECtHR's case law places the initial burden of proof on the accused, who must provide some prima facie indications of indigence, usually through a statement of financial circumstances or supporting documentation (see ***Caresana v. United Kingdom***, 2000). Failure to submit supporting documentation or to participate in the domestic procedure for assessing financial circumstances may lead to the complaint failing, particularly where domestic procedures provide adequate opportunities for such proof. However, the ECtHR has held that this burden is a light one and that domestic authorities should not insist on strict proof. Once a credible indication has been provided, the burden in practical terms shifts to the State, the

applicant succeeds unless there are clear indications to the contrary (***Pakelli***, § 34; ***Tsonyo Tsonev*** (No. 2), § 39).

In ***R.D. v. Poland***, 2001, § 45, the Court clarified its role. It does not reassess the applicant's financial situation, but examines whether the domestic courts exercised their *"margin of appreciation"* consistently with Article 6 § 1. This reflects a moderate area of discretion afforded to national authorities when assessing evidence concerning financial circumstances, subject to the corrective standard formulated in ***Pakelli***.

2. When required by the interests of justice (Merits test)

States are required to provide legal aid only *"when the interests of justice so require"* (***Quaranta v. Switzerland, 1991, § 27***). This is assessed having regard to the facts of the case as a whole, including not only the situation existing when the decision on the legal-aid request was taken, but also the situation existing when the national court decided on the merits of the case (***Granger v. the United Kingdom***, 1990, § 46).

In ***Quaranta v. Switzerland***, the Court formulated the test on which all subsequent case-law has been structured. The applicant, an Italian national living in Switzerland and suspected of drug-related offences, requested free legal aid before the *juge informateur* and the Criminal Court in Vevey. His request was rejected on the ground that the *"needs of the defence"* did not require it and that the case did not *"raise particular difficulties"*. The Court found a violation, identifying three criteria for the interests-of-justice test:

> *"[I]n determining whether the interests of justice require that the applicant be provided with free legal aid, the Court will have regard to various criteria, including: (1) the seriousness of the offence with which Quaranta was charged and the severity of the penalty he risked; (2) the complexity of the case; and (3) the personal situation of Quaranta" (§§ 32–34)*

First criterion: The seriousness of the offence and the severity of the penalty at stake

The Court's approach crystallised into a quasi-standard: whenever there is a risk of deprivation of liberty (such as a prison sentence) at any stage of the proceedings, the interests of justice will normally require representation. This was confirmed in ***Benham*** (§§ 60–64), where the Court's unanimous plenary composition found that, although proceedings for enforcement of the *"community charge"* were formally civil, they engaged the criminal limb of Article 6 because imprisonment could be imposed, and the absence of legal aid under the "Green Form" legal-aid scheme, which provided only basic advice, constituted a violation of Article 6 § 3(c), taken together in conjunction with Article 6 § 1. The same principle was applied in ***Perks and Others v. the United Kingdom***, 1999, concerning several applicants who were deprived of liberty for non-payment of the "community charge" without effective legal assistance.

This principle now operates as a practical rule: **where there is a real possibility of any prison sentence being imposed, refusal of legal aid will normally constitute a violation of Article 6 § 3(c),**

unless the State can show that the other Quaranta factors convincingly point to the opposite conclusion (*Benham v. the United Kingdom* [GC], 1996, § 61; *Quaranta v. Switzerland*, 1991, § 33; *Zdravko Stanev v. Bulgaria*, 2012, § 38).

Second criterion: Complexity of the case

The Court assesses the complexity of a case from several perspectives: legal complexity, procedural complexity, factual complexity, the need to respond to the prosecution's arguments, and the existence of several distinct issues in dispute. Legal complexity may arise from novel or difficult legal questions, as in ***Pham Hoang v. France***, where the legal and factual assumptions in customs proceedings justified the need for representation (§ 40). Procedural complexity is particularly significant in appellate proceedings, where the formalised nature of the proceedings itself is a factor in favour of legal aid (***Twalib v. Greece***, § 53; ***Pakelli***, §§ 36–38). Factual complexity may arise from the number of charges, the volume of evidence or the number of witnesses.

The Court also considers whether the accused could effectively respond to the prosecution's arguments. In ***Pakelli***, the absence of counsel meant that the applicant could not adequately respond to the prosecutor's submissions, although he himself had lodged an appeal (§ 38). In ***Granger v. the United Kingdom***, complexity arose during the appeal hearing itself, in connection with the admissibility of certain evidence, leading the Court to find that the absence of legal aid was contrary to the Convention (§ 47).

Nevertheless, complexity is not always a decisive criterion. In ***Boner*** and ***Maxwell*** the Court found violations even though the legal questions were not particularly complex. In ***Maxwell***, the Court emphasised that, although the legal questions might not have been particularly difficult, the applicant, without legal representation, could not competently address the court and effectively defend himself (§ 38). Thus, complexity is an important, but not independently determinative criterion. In certain cases, the combined weight of the seriousness of the sanction and the accused's personal situation may in itself require free legal aid.

Criterion 3: The person's capacity to conduct their own defence

The third criterion from ***Quaranta*** concerns the ability of the particular accused to defend himself or herself. In this assessment, the Court takes into account several factors, including: lack of knowledge of the language of the proceedings (***Twalib v. Greece***, § 53; ***Quaranta***, § 35), lack of knowledge of the legal system, lack of legal education or a lower level of education, mental or physical conditions affecting comprehension, vulnerability due to detention, age or social marginalisation, as well as the applicant's previous experience with the legal system.

In ***Quaranta***, § 35, the Court emphasised the applicant's personal situation (a young foreign national, a drug user and a person living on social assistance) as a reason why he could not adequately defend himself without counsel. In ***Zdravko Stanev v. Bulgaria*** (2012), § 38, the Court found that an applicant who, although educated, faced complex defamation proceedings without legal training was entitled to legal aid. In ***Talat Tunç v. Turkey*** (2007), the applicant's vulnerability while in police custody,

combined with the seriousness of the charges, carried significant weight in assessing whether the interests of justice required legal aid.

When applying the "interests of justice" requirement, the test to be applied by the domestic authorities does not concern the hypothetical question whether the absence of legal aid would cause "actual harm" to the presentation of the defence. Rather, it is a less stringent test: whether, in the particular circumstances, it appears "likely" that a lawyer would be of assistance (***Artico v. Italy***, 1980, §§ 34–35; ***Alimena v. Italy***, 1991, § 20).

b. As regards free legal aid in appellate proceedings

The right to free legal aid also applies to appellate proceedings (***Shekhov v. Russia***, 2014, § 46; ***Volkov and Adamskiy v. Russia***, 2015, §§ 56–61). In this context, when determining whether legal aid is required, the Court particularly takes into account the following three factors: (a) the scope of jurisdiction of the appellate courts - the types of decisions they issue; (b) the seriousness of the charges against the applicants; and (c) the severity of the penalty they face (***Mikhaylova v. Russia***, 2015, § 80).

c. As regards the right to counsel of one's own choice in the context of free legal aid

The right to be defended by counsel "of one's own choice" is, according to the Court, subject to certain limitations where free legal aid is concerned. When appointing counsel, the courts may take the accused's wishes into account, but they need not do so where there are relevant and sufficient reasons to consider that this is necessary in the interests of justice (***Croissant v. Germany***, 1992, § 29; ***Lagerblom v. Sweden***, 2003, § 54). Similarly, Article 6 § 3(c) cannot be interpreted as guaranteeing a right to replacement of counsel appointed at State expense (***ibid.***, § 55). Furthermore, the interests of justice cannot be regarded as requiring automatic legal aid whenever a convicted person, without an objective prospect of success in the proceedings, wishes to lodge an appeal after having previously received a fair first-instance trial in accordance with Article 6 (**Monnell and Morris v. the United Kingdom**, 1985, § 67).

d. As regards the quality of free legal aid (defence)

As with the other Convention rights, these rights are not exhausted by their formal recognition, in this case by the appointment of free of charge legal counsel. They must be practical and effective, not theoretical and illusory. Appointed counsel must act professionally and diligently in defending the person. A key legal authority on this issue is the 1980 judgment in ***Artico v. Italy***, § 37. The counsel appointed by the court refused from the outset to represent the applicant, citing other obligations and ill health. The Italian authorities did not appoint an appropriate replacement. The Court found a violation of Article 6 § 3(c) of the Convention and based its decision on the following (§ 33):

> *"The Convention is intended to guarantee rights that are not theoretical or illusory, but practical and effective; this applies particularly to the rights of the defence, having regard to the prominent place held by the right to a fair trial in a democratic society. [...] Mere nomination does not ensure effective assistance, since the lawyer appointed for legal aid purposes may die, fall seriously ill, be prevented for a prolonged period from acting or neglect his duties."*

The ***Artico*** test is whether, in the particular circumstances, it is "likely" that effective legal assistance by a lawyer would be of benefit, rather than whether "actual harm" can be demonstrated (***Artico***, §§ 34–35; ***Alimena v. Italy***, 1991, § 20; ***Vamvakas v. Greece***, 2015, § 36). Nevertheless, a Contracting State cannot be held responsible for every shortcoming in the conduct of a lawyer appointed for legal-aid purposes or chosen by the accused (***Lagerblom v. Sweden***, 2003, § 56; ***Kamasinski v. Austria***, 1989, § 65). Because of the independence of the legal profession, the conduct of the defence is essentially a matter between the accused and his or her representative; Contracting States are required to intervene only if the failure of counsel to provide effective representation is manifest or has been sufficiently brought to their attention (***Imbrioscia v. Switzerland***, 1993, § 41; ***Daud v. Portugal***, 1998, § 38; ***Vamvakas v. Greece***, § 36).

IV. DIRECTIVE 2016/1919 AND ITS SIGNIFICANCE FOR DEFENCE FOR INDIGENT PERSONS

Directive (EU) 2016/1919 on legal aid for suspects and accused persons in criminal proceedings and for requested persons in European arrest warrant proceedings (Directive 2016/1919) is relevant to North Macedonia, although at this stage it is not directly binding in the same way as it is for an EU Member State. Its relevance derives from the accession process, particularly the need to align with EU law under Chapter 23 (Judiciary and Fundamental Rights). This is especially important for North Macedonia because Article 75 of the CPC already uses similar wording such as "interests of justice", seriousness of the offence and complexity of the case, but without sufficient normative elaboration.

This Directive forms part of the package of EU standards on the procedural rights of suspects and accused persons in criminal proceedings. It complements Directive 2013/48/EU on access to a lawyer and other directives on procedural safeguards, including the right to interpretation and translation, the right to information, the presumption of innocence and safeguards for children in criminal proceedings. The main objective of the Directive is to ensure **effective legal aid** for suspects and accused persons in criminal proceedings and for persons requested in European arrest warrant proceedings. It does not merely regulate the formal appointment of a lawyer; it sets standards for when, how, and with what quality legal aid must be provided. The Directive is based on Article 47 of the EU Charter of Fundamental Rights, Article 6 § 3(c) of the ECHR and Article 14 § 3(d) of the ICCPR, which guarantee the right to free legal aid where a person lacks sufficient means and the interests of justice so require.

a. Criteria for granting free legal aid

The key provision is Article 4 § 1. Under it, Member States must ensure that suspects and accused persons who lack sufficient means to pay for a lawyer have the right to legal aid **when the interests of justice so require**. This standard almost entirely corresponds to Article 75 of the CPC, which provides that, where the conditions for mandatory defence do not exist, counsel may be appointed to the accused if, given his or her financial situation, the accused cannot bear the costs of the defence and the interests of justice so require, particularly in view of the seriousness of the criminal offence and the complexity of the case. The difference, however, is that the Directive further breaks down the criteria, while Article 75 of the CPC leaves them insufficiently elaborated. This is precisely where the main scope for improving the Macedonian framework lies.

Financial situation (Means test)

Article 4 § 3 provides that, where a means test is applied, **all relevant and objective factors should be taken into account, such as the person's income, capital and family situation, the costs of legal assistance and the standard of living in the State concerned**. This is directly relevant to Article 75 of the CPC, since the domestic provision refers only to "financial situation" without specifying exactly what must be assessed. From the perspective of the Directive, the domestic rule should be further specified so that the court is required to take into account at least: income, assets, family obligations, number of dependants, unemployment, social circumstances, debts, the actual cost of legal representation and the accused's practical ability to pay for defence without jeopardising his or her own subsistence or that of the family.

Merits - Interests of justice (Merits test)

Article 4 § 4 provides that, where a merits test is applied, the State should take into account the seriousness of the criminal offence, the complexity of the case and the severity of the possible sanction. The same paragraph establishes that the merits test is deemed to be satisfied where the person is brought before a court or judge for a decision on detention, as well as during detention. This has two important consequences for North Macedonia. First, the "interests of justice" must not be interpreted narrowly. They are not limited to the formal seriousness of the criminal offence but also encompass the complexity of the evidence, the complexity of the legal issues and the severity of the sanction that the accused actually faces. Second, in cases of detention or decisions on detention, the European standard is particularly strict - the need for legal aid is presumed. The latter, however, is already covered by the right to mandatory defence under Article 74 of the CPC.

b. Stage of the proceedings at which free legal aid should be granted

Article 4 § 5 is of particular importance for the preliminary proceedings. Under it, legal aid must be provided without undue delay and, at the latest, before the first questioning by the police, another law-enforcement authority or a judicial authority, or before the investigative or evidence-gathering measures referred to in Article 2 § 1(c). Article 2 § 1(c) lists, at a minimum, the following measures: identification parades, confrontations and reconstruction of the scene of the criminal offence. This is one of the most important standards in the context of North Macedonia. Article 75 of the CPC contains no clear rule that a request for free defence must be decided before the first questioning or before key evidentiary measures. If counsel is appointed only later, the right may become belated and ineffective. Therefore, when further specifying Article 75 or through guidance from the Supreme Court, it should be established that the decision must be taken urgently, particularly at the early stages of the proceedings.

c. Procedure for deciding on a request for free legal aid

Article 6 § 1 requires decisions on the granting of legal aid and the appointment of a lawyer to be taken **without undue delay** by the competent authority. States should take appropriate measures to ensure that the competent authority decides diligently, with respect for the rights of the defence. Article 6 § 2 requires suspects, accused persons and requested persons to be **informed in writing** if their request for legal aid is wholly or partially rejected. These standards reveal a weakness in Article 75

of the CPC. The domestic provision establishes who decides and who appoints counsel, but does not prescribe a time limit for deciding, written notification of rejection, standards for reasoning or effective review. Therefore, in order to comply with the Directive, a clear procedure should be introduced: short deadlines, a written and reasoned decision, notification of the accused, the possibility of a legal remedy, and urgent temporary appointment of a lawyer where there is a risk that irreversible procedural actions will be taken.

d. Quality of free legal aid

Article 7 is particularly important because it goes beyond the formal logic of an "appointed lawyer". Article 7 § 1 requires Member States to take measures, including with regard to funding, to ensure an effective legal-aid system of adequate quality, as well as legal-aid services of a quality sufficient to safeguard the fairness of the proceedings, while respecting the independence of the legal profession. Article 7 § 2 requires appropriate training for persons involved in decision-making on legal aid, while Article 7 § 3 requires Member States to promote appropriate training for lawyers providing legal-aid services. Article 7 § 4 further provides that suspects, accused persons and requested persons should have the right, upon request, to have the lawyer providing legal aid replaced where the specific circumstances justify this.

For North Macedonia, this means that reform of Article 75 should not be limited to the criteria for granting counsel. Quality standards are also needed: lists of lawyers, appointment criteria, training in criminal defence, a mechanism for replacing inactive or negligent counsel, sufficient preparation time, access to the case file and access to technical assistance where the case requires it.

V. OVERVIEW OF COMPARATIVE PRACTICES FROM EUROPEAN STATES

a. Slovenia

The Republic of Slovenia has a dual model: mandatory defence regulated by *the Zakon o kazenskem postopku* (Criminal Procedure Act - Slovenian CPC[2]), and a model of free legal aid in criminal proceedings regulated by the *Zakon o brezplačni pravni pomoči* (Law on Free Legal Aid[3] - Slovenian LFLA).

Unlike the model in North Macedonia, where the court appoints counsel for indigent persons, the Slovenian model allows counsel to be secured at the police stage, upon the request of the suspect or the person summoned. In this respect, and from the perspective of Council of Europe standards and the right to a fair trial guaranteed by the European Convention on Human Rights, Article 4 § 4 of the Slovenian CPC is significant. This provision requires that the suspect's financial situation be poor and that the suspect be unable to secure a lawyer independently. The applicability of the specific solution

[2] Zakona o kazenskem postopku, Uradni list RS, št. 176/21 – uradno prečiščeno besedilo, 96/22 – odl. US, 2/23 – odl. US, 89/23, 53/24, 93/25 – ZNUZJV and 10/26 – ZKOM, available at: https://pisrs.si/pregledPredpisa?id=ZAKO362

[3] Zakon o brezplačni pravni pomoči, Uradni list RS, št. 96/04 – uradno prečiščeno besedilo, 23/08, 15/14 – odl. US, 19/15 and 93/25 – ZNUZJV, available at: https://pisrs.si/pregledPredpisa?id=ZAKO1265

depends on the suspect being properly and timely informed, and it enables early activation of the right to defence.

A positive aspect of the Slovenian model is continuity of defence, **since once appointed, counsel continues to represent the accused throughout the proceedings**. In contrast, Article 70 of the Slovenian CPC separately regulates mandatory defence, under which the State bears the costs if the accused does not retain counsel, under conditions similar to those in our legislation.

In addition, a parallel free legal-aid system enables broader access to legal protection based on socio-economic criteria. Slovenia's legal-aid system is organised through the courts rather than the executive branch (Article 31 of the Slovenian LFLA). Each court has a **dedicated free legal-aid department** that receives applications, provides information and decides on submitted legal-aid applications as part of the proceedings. The conditions for exercising the right to legal aid are linked to the applicant's and his or her family's material, financial, property and family situation, as well as the merits of the application itself. The merits of the application are linked to the reasonableness or unreasonableness of the case, as well as the importance of the case for the applicant's personal and socio-economic situation, namely whether the expected outcome is of vital importance to the applicant or the family (Article 24 of the Slovenian LFLA).

The court's legal-aid department receives applications accompanied by evidence submitted by the applicant confirming his or her situation (Article 20 of the Slovenian LFLA), or obtains information ex officio from the tax administration and other institutions, etc. (Article 21 of the Slovenian LFLA). In practice, although the legislation does not prescribe an exhaustive list of documents, applicants must provide evidence of their financial, property, and family situation. This usually includes documents concerning income (such as payslips, pension benefits or social assistance), evidence of assets (real estate, vehicles, savings) and documents concerning family circumstances.[4]

b. Croatia

The Republic of Croatia has established a model for providing defence to persons with limited financial means within the *Zakon o kaznenom postupku*[5] (Croatian CPC), which, in addition to mandatory defence, provides for the possibility of defence at the expense of budgetary funds in cases where defence is not mandatory (Article 72 of the Croatian CPC). Croatia goes even further by providing for the possibility of temporary counsel at the expense of budgetary funds during the police procedure (Article 72a of the Croatian CPC).

The statutory regulation of counsel at the expense of budgetary funds in cases of non-mandatory defence establishes a procedure initiated at the accused's request. The conditions are twofold:

[4] https://e-justice.europa.eu/topics/taking-legal-action/legal-aid/si_en?utm

[5] Zakon o kaznenom postupki, NN 152/08, 76/09, 80/11, 121/11, 91/12, 143/12, 56/13, 145/13, 152/14, 70/17, 126/19, 126/19, 130/20, 80/22, 36/24, 72/25, 13/26, available at: https://www.zakon.hr/z/174/zakon-o-kaznenom-postupku?utm_source

- First, the accused's financial situation must be so limited that he or she cannot cover the costs of defence without jeopardising his or her own subsistence and that of the family or persons whom he or she is legally obliged to support, and the complexity, seriousness or special circumstances of the case must justify it. The request is submitted to the state prosecutor before an indictment is brought, or to the court once an indictment has already been brought. The provision regulates in detail the documents accompanying the request: evidence of the accused's financial situation, family members, total income during the previous year, information on and the status of accounts held with banks and other financial institutions, ownership of real estate, movable property and rights on which the financial situation is based.
- Second, the request must be justified in view of the interests of justice. Whether the request is justified is decided by the state prosecutor or the court, depending on the stage of the proceedings.

The terms **"complexity", "seriousness" and "special circumstances" are not legally defined but are mentioned in Article 72 and in practice are left to the discretion of the court**. These terms constitute open-ended legal standards that the court must interpret in accordance with the "interests of justice" criteria[6]. The criteria have been developed within European fair-trial standards under the European Convention on Human Rights. Courts consider them individually and on a case-by-case basis, for example: the volume of evidence, the number of accused persons, the seriousness of the criminal offence, and the accused's procedural position.

At the police stage, the Croatian CPC contains a specific provision, Article 72a, introduced in 2019, regulating temporary legal assistance by counsel at the expense of budgetary funds for an arrested person.[7]. In this case, the provision provides that legal assistance by counsel is available from the moment of arrest for as long as the arrest lasts, if the person states that, given their financial situation, they cannot cover the costs of defence without jeopardising their own subsistence and that of the family or persons whom they are legally obliged to support. This is an initial assessment at this stage (a prima facie assessment) based on the person's statement, rather than a detailed assessment under the rules laid down in Article 72. The possibility also applies to proceedings concerning criminal offences punishable by more than five years' imprisonment[8]. A specific feature of this provision is that the person must be informed that they will be required to reimburse the costs of temporary legal assistance if, during the subsequent proceedings, it is established that, given their financial situation, they were able to bear the costs of defence.

The Croatian model ensures continuity of legal assistance by counsel in criminal proceedings, regardless of the stage reached, through a provision that, where counsel has been appointed during

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[6] Art. 6 ECHR; CEPEJ Guidelines on legal aid in criminal matters, Council of Europe, available at: https://rm.coe.int/cepej-legal-aid-guidelines/1680a4b1e2

[7] Where the person is arrested and there are reasonable grounds for suspicion that he or she has committed a criminal offence prosecuted ex officio for which there are grounds for ordering investigative detention; a person caught in the commission of a criminal offence prosecuted ex officio (Article 107, points 2 and 3 of the Croatian CPC).

[8] See further Article 72a § 2, points 1–5 of the Croatian CPC, available at: https://www.zakon.hr/z/174/zakon-o-kaznenom-postupku?utm_source

the police procedure, as a rule the same counsel will subsequently be appointed (by the court or prosecution) at the expense of budgetary funds (Article 72 § 6 of the Croatian CPC).

With this solution, the Croatian model establishes a clear and functional mechanism for providing defence to persons with limited financial means within criminal proceedings, which is not limited to cases of mandatory defence but also applies where necessary to ensure a fair trial. Unlike Macedonian practice, the Croatian model provides a clear procedural framework and active implementation of defence for persons with limited financial means through a detailed procedure and decision-making criteria.

c. Albania

The Republic of Albania has established a combined model for providing defence in criminal proceedings (mandatory defence regulated by the Kodi i Procedurës Penale[9] - Code of Criminal Procedure), as well as a separate system of free legal aid regulated by Për ndihmën juridike të garantuar nga shteti[10] - Law on Free Legal Aid. Apart from mandatory defence, the Code of Criminal Procedure does not expressly regulate defence for indigent persons as a separate institution. This issue is regulated outside criminal procedural legislation, specifically by the Law on Free Legal Aid (Law No. 111/2017). Albania has established a parallel, institutionalised system of free legal aid operating through a specialised institution (the Legal Aid Directorate), the national bar association, and the competent courts.

First, to exercise the right to legal aid for, among other things, defence in criminal proceedings, a person must demonstrate insufficient income and assets to cover the costs of counsel (Article 12 § 1). The law sets the income threshold at a level considered insufficient where the total income of all family members, divided by the number of family members, is below 50 per cent of the minimum monthly wage established under the applicable legislation (Article 12 § 2), or, for a person living alone, where income is below the minimum monthly wage (Article 12 § 3). As regards assets, the total value of property owned by the applicant must not exceed 36 minimum monthly wages under the applicable legislation (Article 12 § 5). The Albanian system does not provide for a separate criterion concerning the significance of the proceedings for the person as an autonomous legal standard; rather, this aspect is addressed indirectly through the economic criteria and the applicant's vulnerability established in Article 12 of the Law.

Legal aid in criminal proceedings is provided through the secondary legal-aid mechanism, for which the applicant submits a completed application with supporting evidence to the competent court or investigative body at any stage of the proceedings (Article 19 § 1). At this stage, the court does not decide on the substance of the legal-aid request, but serves as a procedural channel through which the

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[9] Code of Criminal Procedure of the Republic of Albania (approved by Law No. 7905/1995 of 21 March 1995, and amended up to Law No. 147/2020 of 17 December 2020), available in Albanian at: https://www.wipo.int/wipolex/en/legislation/details/20977?utm_source, version incorporating amendments up to 2020.

[10] Ligji nr. 111/2017 "Për ndihmën juridike të garantuar nga shteti", Republic of Albania. Note: it is also referred to in some sources as the Law on State-Guaranteed Legal Aid, available in Albanian at: https://www.drejtesia.gov.al/wp-content/uploads/2019/02/LIGJ-nr.-111-2017-date-14.12.2017.pdf?utm_source

request is transmitted to the competent legal-aid authority. Upon receipt, the competent authority conducts an initial administrative check to determine whether the application is complete, whether the required evidence is attached, and whether the formal conditions for further consideration are met. This filter is a procedural stage that precedes the substantive assessment of the material conditions.

The most distinctive feature of the Albanian legal-aid model, however, is that although the request may be submitted to a court or investigative body during the criminal proceedings, the substantive decision on granting legal aid is taken by the administrative authority responsible for the legal-aid system (essentially the Legal Aid Directorate - Drejtoria e Ndihmës Juridike Falas). The Albanian model is therefore characterised as an administratively managed system.

The evidence to be submitted by the applicant is prescribed by a by-law, an Instruction[11]. The Instruction has a technical and operational function, intended to clarify documentation and administrative procedures for implementing the Law, without introducing new substantive criteria for granting legal aid. In addition to a list of accompanying documents and evidence, it regulates financial conditions and administrative processing, as well as the functioning of the free legal-aid system.

The Albanian legal-aid system contains no normatively developed test based on the seriousness of the offence, complexity of the case or significance of the proceedings for the person, either in Law No. 111/2017 or in Instruction No. 6/2019. Assessment of the "merits" of the request remains within the general statutory criteria of Article 17 and the economic conditions under Articles 14-15. In principle, the law provides that a person may receive primary legal aid and, if it is assessed that secondary legal aid is needed, the person is immediately informed of the conditions for obtaining it and assisted in submitting an application for secondary legal aid (Article 17 § 6).

d. Federal Republic of Germany

The Federal Republic of Germany operates a model of providing defence in criminal proceedings that is not based on a separate system of "defence for indigent persons" as an independent institution, but on the concept of mandatory defence (*notwendige Verteidigung*) regulated by the *Strafprozessordnung*[12] (German Code of Criminal Procedure), as well as the system of court-appointed defence counsel (*Pflichtverteidigung*). The German legal system has no separate administrative procedure for free legal aid in criminal cases; rather, access to counsel is secured through procedural guarantees associated with the right to defence and the interests of justice.

Under the Strafprozessordnung, the court appoints counsel (Pflichtverteidiger) where this is necessary to ensure effective defence, particularly in cases of detention, serious criminal offences or procedural complexity. The key criterion is not the accused's financial situation, but the interests of

[11] Udhëzim nr. 6, datë 20.08.2019 "Për rregullat dhe procedurat e kryerjes së pagesave të shpenzimeve gjyqësore, për të cilat është vendosur përjashtim në rastin e dhënies së ndihmës juridike", issued pursuant to Article 19(4) of Law No. 111/2017 on State-guaranteed legal aid (author's translation: Instruction No. 6 of 20 August 2019 "On the rules and procedures for payment of court costs for which an exemption has been granted in the event of legal aid being awarded", adopted pursuant to Article 19(4) of Law No. 111/2017 on State-guaranteed legal aid).

[12] Published in the German legal database (Gesetze im Internet), Federal Ministry of Justice, available at: https://www.gesetze-im-internet.de/englisch_stpo/?utm_source

justice and the need to ensure a fair trial. Financial inability does not constitute an independent ground for appointing counsel, but may have indirect significance only within the assessment of procedural necessity. The German model is therefore characterised as a court-centred and process-oriented system in which access to State-funded defence is secured through institutional mandatory defence rather than through a separate administrative legal-aid procedure.[13]

In the Code, mandatory defence is regulated in Article 140. This provision establishes an obligation for the court to appoint counsel where necessary to ensure effective defence, particularly when the accused is deprived of liberty, where serious criminal offences are involved, where the proceedings are legally or factually complex, or where there is a risk of a significant sentence being imposed. In these cases, counsel is appointed irrespective of the accused's financial situation, which is not of primary significance but is taken into account only indirectly when assessing the need for mandatory defence.

Depending on the specific circumstances of the case, the court assesses the need to appoint counsel. It takes into account the seriousness of the criminal offence, the accused's procedural position, the complexity of the evidentiary situation and the risk to the effective exercise of the right to defence.

A characteristic of the German model is that appointed counsel is selected by the court and his or her function is to ensure a minimum standard of a fair trial, rather than to operate as a conventional system of social legal aid based on an income threshold. With this solution, the German model establishes a process-oriented system for protecting the right to defence, in which the central criterion is the interests of justice and the need for effective defence, rather than the accused's social situation as an independent condition for access to counsel.[14]

e. Netherlands

The Kingdom of the Netherlands has established a system of free legal aid in criminal proceedings based on an institutionalised and administratively managed model, in which access to legal aid is conditional upon satisfying statutory criteria, including the person's financial situation. Accordingly, the Dutch system operates as a separate legal-aid mechanism organised through a centralised institution responsible for administering and approving legal aid.

The legal-aid system is regulated by the Legal Aid Act (Netherlands)[15], which establishes a structured procedure for granting State-funded legal aid. Administration of the system is entrusted to the Legal Aid Board, which under Article 7 of the Act is responsible for organising and implementing the legal-aid system, while the conditions for granting legal aid, including financial criteria, are regulated by Articles 12 and 34 of the Act.

In criminal proceedings, legal aid is provided through the appointment of a lawyer at State expense, with access to such assistance generally linked to application of an income/means threshold

[13] https://www.fachanwalt.de/ratgeber/pflichtverteidigung-voraussetzungen?utm
[14] https://www.ferner-alsdorf.com/understanding-court-appointed-defense-in-german/?utm
[15] Wet op de rechtsbijstand (Legal Aid Act), Stb. 1993, 775, available at: https://wetten.overheid.nl/BWBR0006368/2026-01-01

under Article 34 of the Act. However, in certain situations, particularly where the person is deprived of liberty or where the interests of justice so require, legal aid is provided irrespective of the person's financial situation, in accordance with the relevant provisions of the Act and criminal procedural legislation, in order to guarantee effective exercise of the right to defence.

The Dutch model is characterised by a clear distinction between the administrative procedure for granting legal aid and the judicial criminal proceedings. The decision to grant legal aid is taken by the competent administrative authority, while the court has no primary role in approving legal aid but provides procedural safeguards during the proceedings. In this way, the system represents an administratively oriented model of legal aid in which access to State-funded counsel is structurally linked to social policy and State-support mechanisms.

With this solution, the Dutch model establishes a system for protecting the right to defence that combines social and procedural elements, with assessment of the applicant's financial situation under Article 34 of the Act occupying a central place, while at the same time retaining guarantees of effective defence in situations where the interests of justice so require.[16]

VI. RECOMMENDATIONS FOR IMPROVING DEFENCE FOR INDIGENT PERSONS

The findings of this analysis unequivocally demonstrate that there is a gap, on the one hand, between Article 75 of the CPC and its application, i.e. its non-application in practice, and, on the other hand, Directive 2016/1919 of the EU. Bridging this gap, or moving towards alignment, is possible. In the short term, legislative amendments are not necessarily required; however, in the long term, amendments to key laws are recommended in order to address the problem systemically.

Long-term systemic solution

In the long term, two legislative solutions could bridge the gap between Article 75 of the CPC and the EU Directive and improve access to justice for accused persons. The first is to further specify Article 75 within the CPC itself. The second is to bring the institution under the free legal-aid regime, within the competence of a single body but with a special urgent criminal-procedural sub-regime; otherwise, the ordinary administrative model of free legal aid could not meet the Directive's standard of a decision before questioning and without delay. This is particularly important because the current Law on Free Legal Aid merely indicates that criminal defence is provided under the CPC. At the normative level, the cleanest option is to amend the CPC by:

- Amending Article 71 § 2 to establish an obligation to inform the accused of the possibility of using defence for indigent persons;
- Amending and supplementing Article 75 in its entirety by defining the conditions for determining financial circumstances or referring to application of the Free Legal Aid Act in this respect;
- Introducing a new Article 75-a on the procedure, deadlines, written decision and legal remedy;

[16]https://www.rechtsbijstand.nl/over-ons/about-the-dutch-legal-aid-board/?utm_

- Amending Article 206 on mandatory instruction to establish an obligation to inform the accused of the right to counsel.

If the legislature chooses the second sub-option, integration into the legal-aid regime, the amendments must be twofold: to the CPC and the Law on Free Legal Aid. Article 38 of the Law on Free Legal Aid should be replaced by a provision expressly including criminal defence as a specific form of secondary legal aid, but with a 24/7 emergency procedure, decentralised decision-making and a link to the court/on-call lists. Otherwise, such integration would be institutionally elegant but practically unsuccessful, because it could not provide a decision before the first questioning, which is the Directive's key requirement.

In addition to the statutory text, implementing by-laws will be required: a standard application form; a list of documents concerning financial circumstances; rules for appointment/random selection from lawyers' lists; IT fields in AKMIS/the judicial information system; a methodology for annual data; and a training programme for judges, prosecutors, police and lawyers.

Institutionally, the actors responsible for this option should be the Ministry of Justice, the Assembly, the Supreme Court, the Judicial Council, the Academy for Judges and Public Prosecutors, the Bar Association, basic courts, the Public Prosecutor's Office and the Ministry of Internal Affairs. In terms of resources, this means not only a larger remuneration budget but also processing staff, on-call schedules, IT adaptation, training, and translated/accessible forms. In terms of legal risk, the gain is twofold: reducing ECtHR exposure and clearer future alignment with the acquis in the fundamentals cluster.

Short-term implementation option

While awaiting legislative amendment, guidance/legal opinion from the Supreme Court is needed to ensure uniform application of Article 75. Such guidance cannot create a new statutory legal remedy or a new budgetary regime, but it can accomplish three essential things:

- to unify the interpretation of "financial situation" and "interests of justice",
- to require mandatory instruction and recording of requests in the official record, and
- to establish procedural standards for urgency, reasoning and appointment.

Such an approach is consistent with the key role of the Supreme Court in ensuring uniform application of laws.

The content of the guidance should be detailed. It should establish that:

- Upon the first contact with the suspect and no later than before questioning, every authority must inform the person not only of the right to counsel but also of the right to request free counsel under Article 75;
- an oral request must be entered into the official record;
- prima facie evidence of lack of means is sufficient at the early stage;
- the interests of justice are assessed according to the seriousness of the charge, the complexity of the facts and law, the risk of imprisonment, the number of accused persons, expert

examinations, language barriers, health/mental condition and the person's ability to defend himself or herself independently; and

- if a decision cannot be taken before questioning or a key procedural action, a temporary mechanism for urgent appointment from an on-call list should be used. This is not a statutory substitute, but a practical interpretation of Article 75 in light of Article 6 of the ECHR and Article 11 of the Directive.

The guidance should also include: a standard application form; a template for a written decision; a minimum reasoning checklist; rules for selecting a lawyer from the list in accordance with the rules of the Bar Association of the Republic of North Macedonia and the established system for electronic appointment of lawyers, with the possibility for the accused to propose a lawyer if available and there is no conflict of interest; an obligation to keep records and report on the number of requests, decision-making time, approval/rejection rate, stage of proceedings and grounds for rejection. This is the quickest way to reduce the practical risk in the meantime.

COMPARATIVE TABLE

Criterion	Slovenia	Croatia	Albania	Federal Republic of Germany	Netherlands
1. Type of model	Dual: mandatory defence under the CPC + a separate, COURT-led system of free legal aid (FLA) under the LFLA.	Integrated criminal-procedural model: non-mandatory defence and temporary assistance are regulated ENTIRELY in the CPC.	Dual: mandatory defence under the Code of Criminal Procedure + a separate, ADMINISTRATIVELY managed FLA system (Law 111/2017).	Unitary, COURT-centred model. There is no separate FLA for criminal matters - everything operates through "necessary defence" (notwendige Verteidigung).	Mixed: general administrative free legal-aid system (Wrb) + a special criminal-procedural regime of on-call/appointed counsel.
2. Law regulating the matter	Zakon o kazenskem postopku (CPC); Zakon o brezplačni pravni pomoči (LFLA - Law on Free Legal Aid).	Zakon o kaznenom postupku (CPC): Art. 72 (non-mandatory defence) and Art. 72a (temporary assistance at the police stage, since 2019).	Kodi i Procedurës Penale (Code of Criminal Procedure); Law No. 111/2017 on State-guaranteed free legal aid; Instruction No. 6/2019.	Strafprozessordnung - StPO (§§ 140-143a). There is no separate FLA law for criminal matters.	Wet op de rechtsbijstand - Wrb (Legal Aid Act); Wetboek van Strafvordering - Code of Criminal Procedure (including Arts. 28-40).
3. Financial-situation conditions (means test) – are they precise?	YES - precise threshold. The social situation is considered at risk if the applicant's monthly income, or average income per family member, does not exceed twice the basic amount of the minimum income. Income, assets and family situation are assessed.	PARTLY. Standard (Art. 72): the accused cannot cover the costs without jeopardising his or her own and family subsistence - no numerical threshold, but the law DETAILS the supporting documents. At the police stage (72a): only a prima facie	YES - expressly precise NUMERICAL threshold (Art. 12). Income is insufficient if total family income divided by the number of family members is below 50% of the minimum wage; for a person living alone - below the minimum wage. Asset limit: total value up to 36 minimum wages.	NO. Financial situation is NOT a condition. Financial inability has no independent significance - it may affect the assessment only indirectly through procedural necessity.	YES – precise threshold in the general regime (Arts. 12 and 34 Wrb): registered (taxable) income and assets are assessed, with limits determined annually. HOWEVER – for detained suspects and serious cases, assistance is provided without a means test.

		assessment based on a statement.			
4. Merits-test conditions	YES (Art. 24 LFLA): the "reasonableness" of the case and its significance for the applicant's personal and socio-economic situation are assessed (whether the outcome is of vital importance to the applicant/family).	YES: in addition to the financial condition, the "complexity, seriousness or special circumstances of the case" must justify appointment, i.e. the request must be justified by the interests of justice. The terms are not legally defined - they are interpreted case by case.	NO normatively developed test for seriousness/complexity. "Merits" are assessed indirectly through the applicant's economic and social circumstances and vulnerability. There is no autonomous criterion concerning the significance of the proceedings.	YES - this is the ESSENCE of the model (§ 140 StPO). Some cases are defined objectively by law (para. 1: trial before the Landgericht/OLG, serious offence (Verbrechen), detention exceeding 3 months, prohibition from practising a profession, etc.); general clause (para. 2) - seriousness of the offence, expected sanction, factual/legal complexity, or obvious inability of the person to defend himself or herself.	PARTLY. In voluntarily requested FLA, the type, significance and prospects of the case are assessed. In criminal cases, the merits test is largely replaced by statutory grounds: in cases of detention and serious charges - appointment ex officio (ambtshalve).
5. Stage of proceedings and early access	Counsel is possible already at the police stage, but AT THE REQUEST of the suspect. It depends on timely information being provided to the person.	FULL coverage. Art. 72a - temporary assistance from the moment of arrest for the duration of the arrest; Art. 72 - from the decision to open an investigation / notification of evidentiary actions, or following an indictment, until finality.	The request may be submitted at ANY stage, to the court or investigative body; assistance is provided as secondary legal aid.	§ 141 StPO – appointment without delay once the person has been informed of the proceedings, as a rule BEFORE the first questioning. Following the reform (transposition of Directive 2016/1919), emphasis is placed on early appointment.	Very EARLY access. "Piketregeling" (Art. 40 Sv): every detained/arrested person receives an on-call lawyer (piketadvocaat) REGARDLESS of income and without having to request one.

6. Who decides on the request	A special FLA SERVICE within the competent court (judicial, not executive body) - receives applications, provides information and decides.	Depends on the stage: the STATE PROSECUTOR before an indictment is brought, the COURT after an indictment has been brought. Counsel is formally appointed by the president of the court.	The request is submitted through the court/investigative body (procedural channel), but the substantive decision is taken by the ADMINISTRATIVE BODY - the Legal Aid Directorate.	THE COURT (the competent judge; in preliminary proceedings - the court, upon a proposal by the prosecution) - § 142 StPO.	Administrative LEGAL AID BOARD (Raad voor Rechtsbijstand). In criminal cases the court issues a "decision/order for appointment" (last tot toevoeging) to the Board; at the police stage appointment is automatic.
7. What free legal aid covers	Full or partial coverage of lawyer's costs and possible exemption from procedural costs; legal advice, representation and preparation of submissions.	Counsel's costs are borne by budgetary funds; counsel undertakes all actions in the accused's interests throughout the proceedings. Temporary assistance (72a) covers defence for the duration of the arrest.	Secondary legal aid - representation and defence by a lawyer from the Bar Association's list; plus primary legal aid (advice, information) and exemption from court fees/costs.	Full defence by appointed counsel (Pflichtverteidiger) throughout the proceedings - access to the case file (§ 147), presence at questioning and hearings, legal remedies. The State advances the costs.	Appointment of a lawyer at State expense; at the police stage - advice and presence before/during questioning; at the judicial stage - full representation; assistance also extends to appeals.
8. Reimbursement of costs / personal contribution	The beneficiary must report changes in financial circumstances; FLA granted on the basis of false information is recovered with statutory interest. Partial FLA is possible where the applicant	In the case of temporary assistance (72a), the person is informed that he or she will be REQUIRED to reimburse the costs if it is subsequently established that	The system targets persons below the financial threshold; exemption from court fees and costs is also provided for beneficiaries.	KEY CHARACTERISTIC: appointment is free at the outset, but the CONVICTED PERSON generally reimburses the costs of the proceedings, including counsel's fees (§ 465 StPO) - unless unable to pay. This is STATE ADVANCEMENT, not social assistance.	Under voluntary FLA, a personal contribution (eigen bijdrage) proportional to income is paid. For ex officio appointment in criminal cases, as a rule there is NO personal contribution; following conviction,

	bears part of the costs.	the person could have borne them.			costs may be recovered.
9. Continuity and choice of counsel	CONTINUITY - once appointed, counsel generally continues to represent the accused throughout the proceedings.	EXPRESS continuity - if counsel is appointed during the police procedure, the same counsel is generally appointed subsequently (Art. 72(6)); replacement only for justified reasons (Art. 73(4)).	Secondary assistance is provided by a lawyer from the Bar's list; continuity of representation throughout the proceedings.	The court takes the accused's wishes into account when selecting counsel, but not necessarily; replacement - § 143a subject to conditions. Appointment continues until finality (§ 143).	The person may name a preferred lawyer from the on-call list upon arrest; once appointed, counsel generally continues; replacement is possible subject to conditions.
10. Legal remedy against refusal	Legal protection (appeal / administrative-judicial review) is provided against a decision of the FLA Service under the LFLA.	An appeal against a decision appointing counsel under Art. 72 has traditionally not been admissible; protection is provided through procedural safeguards and the duty to inform. (To be checked against the current text.)	The decision is an administrative act of the Directorate - subject to administrative and judicial review under the general rules.	Decisions on (non-) appointment of counsel may be challenged by a complaint (Beschwerde) under the general rules of the StPO.	Objections and administrative-judicial review are available against a decision of the Legal Aid Board.

This publication was produced with the financial support of the European Union and the Council of Europe. Its contents are the sole responsibility of the authors. Views expressed herein can in no way be taken to respect the official opinion of the European Union or the Council of Europe.

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